

**208 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-50529-2022

Date of decision : 30.05.2023

Ramniwas @ Lala**.....Petitioner****versus****State of Haryana****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********Present :- Mr. Devinder Singh, Advocate
for the petitioner.

Mr. B.S. Virk, Senior DAG, Haryana.

*********RAJESH BHARDWAJ, J. (Oral)**

Petitioner has approached this Court by way of present petition praying for grant of regular bail in case FIR No.53 dated 01.03.2022, under Section 20(b)(ii)(c) of the NDPS Act, registered at Police Station Sadar Charkhi Dadri, District Charkhi Dadri.

As per the facts of the case, police party received a secret information that Ramniwas son of Laxman Mittal was sitting near the temple and was carrying a bag containing charas-ganja. If the raid was conducted, he could be arrested with the contraband. On receipt of the information, the investigating agencies sent the information to the higher officials as per the mandate of Section 42 of the NDPS Act. In pursuance to the same, the raiding party was made and they reached the place as given in the information. On reaching, they found a person sitting with the bag and on asking, he disclosed his name as Ramniwas son of Laxman Mittal. He was given an offer under Section 50 of the NDPS Act for his search as he was suspected to be carrying the contraband. On his

consent, Naib Tehsildar was called on the spot and search of the person of the accused and the bag he was carrying, both were conducted by him in the presence of the Naib Tehsildar. On search of the bag, charas weighing 1.20 kg was found. The petitioner failed to show any license regarding the possession of the same and thus, the FIR was registered and the petitioner was arrested on the spot. The investigation commenced and the samples were taken and sent to the FSL. Petitioner approached the Court of learned Additional Sessions Judge, Charkhi Dadri praying for grant of bail. However, after hearing counsel for both the sides, learned Additional Sessions Judge, declined the same vide his order dated 11.10.2022. Aggrieved by the same, petitioner is before this Court praying for grant of regular bail.

It has been vehemently contended by counsel for the petitioner that petitioner is a senior citizen of the age of 66 years and he has been falsely implicated in this case. He has submitted that the provisions of Section 42 of NDPS Act has not been complied with in the present case. He has further submitted that the recovery is made from the public place but the investigating agency did not join any independent witness at the time of search. He submits that there is violation of Section 50 of the NDPS Act as well as the offer has not been given as per the mandate of Section 50 of the NDPS Act. He submits that the petitioner who is 66 years of age has been implicated in this case on the basis of cock and bull story made by the investigating agency. He has further submitted that the recovered contraband is allegedly weighing 1.20 kg charas which is marginally above the commercial quantity and thus, has been shown in the commercial quantity. He has further submitted that the

weight of the contraband is 1.20 kg which is including the weight of the bag. He submits that even if the case of the prosecution is assumed to be true even then the recovered contraband would fall in non-commercial quantity and the provisions of Section 37 of NDPS Act would not even be attracted in the present case. He has submitted that the petitioner has no criminal antecedents and thus, he deserves to be granted bail.

Learned State counsel has opposed the submissions made by counsel for the petitioner. He has submitted that the raid was conducted on the basis of the secret information regarding the petitioner and the compliance of provisions of Section 42 and thereafter, Section 50 of the NDPS Act were duly made. He has submitted that the recovery effected from the petitioner was of the contraband weighing 1.20 kg of charas which is a commercial quantity. He submits that as per the instructions, petitioner is not involved in any other case of the similar nature. He has further submitted that out of 16 prosecution witnesses, 05 witnesses have already been examined.

I have heard counsel for the parties and perused the record.

Evidently, petitioner is behind bars since 01.03.2022. the recovered contraband from the bag being carried by the petitioner is 1.20 kg of charas including the weight of the bag from which recovery was made. There is nothing on record to show that the petitioner has any criminal antecedents. Out of 16 prosecution witnesses, 05 witnesses already stand examined. The arguments raised by both the sides is the subject matter of the trial Court to be appreciated on the basis of the evidence to be led by both the sides before the trial Court.

The trial of the case will take sufficiently long time. This Court would refrain itself from commenting anything on the merits of the case. However, keeping in view the custody as well as the attending facts and circumstances of the case, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

30.05.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No